

WAYNE COUNTY RULES OF CIVIL PROCEDURE

Passed By Wayne County Bar Association Effective October 30, 1997

RULE 1

SCOPE AND CITATION

These rules shall govern the procedure and practice of civil cases in the Wayne Circuit and Superior Courts unless otherwise provided by law or rules of the Supreme Court of Indiana. These rules shall be cited as LCvR

RULE 2

APPEARANCE BY ATTORNEY

A. Initiating Party.

At the time an action is commenced, an attorney representing the initiating party must:

- (1) be a member in good standing of the Board of the State of Indiana; and
- (2) file with the Clerk of the Court a Written Appearance form setting forth the following information:
 1. Name of the initiating party or parties to the proceeding;
 2. Name, address, attorney number, telephone number, FAX number, and computer address of any attorney representing the initiating party, as applicable;
 3. The case type of the proceeding [Administrative Rule 8(B) (3)];
 4. A statement that the party will or will not accept service by FAX;
 5. In domestic relations, Uniform Reciprocal Enforcement of Support (UREA), paternity, delinquency, Child in Need of Services (CHINS), guardianship, and any other proceedings in which support may be an issue, the Social Security Identification Number of all family members;
 6. The caption and case number of all related cases; and,
 7. Such additional matters specified by state rules required to maintain the information management system employed by the court.

B. Responding Party.

At the time the responding party or parties first appear in a case, if that party or parties are represented by an attorney, the attorney must:

- (1) be a member in good standing of the Bar of the State of

(2) file with the Clerk of the Court a Written Appearance form setting forth the following information:

1. Name of the party or parties responding;
2. Name, address, attorney number, telephone number, FAX number, and computer address of the attorney representing the responding party or parties, as applicable;
3. The case number previously assigned to the proceeding;
4. A statement that the responding party or parties will or will not accept service by FAX; and,
5. Such additional matters specified by state rules required to maintain the information management system employed by the Court.

C. Intervening Party.

At the time the first matter is submitted to the Court seeking to intervene in a proceeding, if such intervening party or parties are represented by an attorney, that attorney must:

1. Be a member in good standing of the Board of the State of Indiana; and
 2. file with the Clerk of the Court an appearance form setting forth the following information:
 1. Name of the party or parties responding;
 2. Name, address, attorney number, telephone number, FAX number, and computer address of the attorney representing the responding party or parties, as applicable;
 3. The case number previously assigned to the proceeding;
 4. A statement that the responding party or parties will or will not accept service by FAX; and,
 5. Such additional matters specified by state rules required to maintain the information management system employed by the Court.
- D. Public Notice of Identifying Information~

Information relating to the parties set forth in this rule may be filed under seal of the court as warranted by the circumstances presented in a particular case.

E. Completion and Correction of Information.

In the event matters must be filed before the information required by this rule is available, the Appearance form shall be submitted with available information and supplemented when the absent information is acquired. Parties shall promptly advise the Clerk of the Court of any change in the information previously supplied to the Court.

F. Service.

The Clerk of the Court shall use the information set forth in the Appearance form for service by mail under Trial Rule 5(B) (2)

G. Pro Hac Vice.

A person not a member of the Bar of the State of Indiana shall not generally be permitted to practice in the Civil Division of the Wayne County Court System. The Court in its discretion may permit such counsel to appear only for a specifically limited purpose and time. Counsel's Motion shall strictly comply with Admission and Discipline Rule 3, and disclose such purpose, time, and all other cases in which the attorney or members of the firm have been permitted to appear in the State of Indiana.

H. Non-resident Attorney.

Whenever in its discretion the Court believes it would facilitate the conduct of litigation, the Court may require any attorney who is a member of the Bar of Indiana and who does not maintain an office in Indiana, to retain as local counsel a member of the Bar of Indiana who maintains a local office in Indiana. Notice served upon such local counsel shall constitute service upon all other counsel appearing of record for such party.

RULE 3

WITHDRAWAL OF APPEARANCE

All withdrawals of Appearance shall be in writing and by leave of court. Permission to withdraw shall be given only after the withdrawing attorney has given his or her client ten (10) days written notice of his or her intention to withdraw and has filed a copy of such with the court or upon a simultaneous entering of Appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against him, whichever is appropriate, and other pertinent information such as a pending trial setting date or any other hearing date. Such letter of withdrawal shall be sent to the client via both certified mail -return receipt requested and first class mail, postage pre—paid. The certificate of service attached to the required motion for leave to withdraw must indicate compliance with both forms of mail to the client and to all counsel of record or the request shall be denied. The court will not grant a request for withdrawal of appearance unless the same has been filed with the court at least ten (10) days prior to the trial date, except for good cause shown.

RULE 4

FILING

A. Filing and Submission Only to the Clerk; Proof of Service; Sanctions.

All papers presented for filing shall be submitted to the Clerk and not to the court. All pleadings, motions and other papers submitted for filing which are required to be served under Trial Rule 5(A) shall be filed no later than three (3) days after service and shall contain proof of service pursuant to Trial Rule 5(B) (2) . If such papers are filed before service, proof of service thereof shall be filed no later than three (3) business days thereafter. Upon failure to comply with this rule, the court may, on motion of any party or on its own motion, impose appropriate sanctions.

B. Separate Motions and Order; Order by Chronological Case Summary Entry Form; Service.

Proposed orders shall be prepared and filed separately from the pleadings, petitions, motion or other papers to which they have reference.

Orders, either routine in nature or uncontested including, for example, those setting or continuing a hearing, shall be effected by the chronological case summary entry only, which shall contain the concise substance of the order.

All orders shall be accompanied with sufficient copies so that copies may be mailed to all parties. C.

Facsimile.

Facsimile filing is permitting in the Wayne Circuit and Wayne Superior Courts provided such filing is in accordance with the procedure contemplated by Indiana Administrative Rule 12. If the filing requires immediate attention of the Judge, it shall be so indicated in bold letters in an accompanying transmittal memorandum. Facsimile filing must be through the Clerk's central reception number (765— 973-9250) . Legibility of documents and timeliness of filing is the responsibility of the sender.

Any documents filed by facsimile which seek an Order of Court must be accompanied by a copy of a proposed order. Such proposed order must contain the requesting party or attorney's facsimile number in the distribution list. If the Court adopts the proposed order and certifies that an emergency exists, the Clerk shall return such Order to sender by facsimile. Upon

receipt of the Court's Order, sender shall serve it upon all parties or counsel of record by facsimile or First Class U.S. Mail and file an acknowledgment of receipt and Certificate of Service via facsimile to the Clerk's central reception number on the form below:

Cause No.

Acknowledgment and Certificate of Service:

I acknowledge receipt of the following order or request from the Court:

_____ and certify that I have served a copy of the Court's Order or request upon the following parties or counsel of record: _____ via: _____ facsimile transmission; First Class, U.S. Mail

Firm Name

Attorney's Name, Address & Telephone

Attorney's Number

D. Counsel to Furnish Pleadings to Special Judge.

When a Special Judge who is not a Wayne County Judge is selected and qualifies in a case, copies of all filings subsequent to the qualification of such Special Judge shall be delivered in person, by mail, or by facsimile to the office of the Special Judge with certificate of forwarding same made a part of the filing.

E. Discovery Filings.

Except as may be filed simultaneously with the initial pleading (i.e., Complaint, Petition for Dissolution of Marriage, Petition for Modification), no deposition or request for discovery or response thereto under Trial Rules 30,31, 33, 34, or 36 shall be filed with the Clerk's Office or Court unless:

- a. A motion is filed pursuant, to T.R. 26(C) or 37 and the original deposition or request for discovery or response thereto is necessary to enable the Court to rule; or
- b. A party desires to use the deposition or request for discovery or response thereto for evidentiary purposes at trial or in connection with a motion, and the Court, either upon its own motion or that of any party, or as a part of any pre-trial order, orders the filing of the

RULE 5
MOTIONS

A. Briefs.

All motions filed pursuant to Trial Rules 12 and 56 shall be accompanied by a separate supporting Brief. Whenever Briefs are required or requested in a case, an adverse party shall have thirty (30) days after service the initial Brief or Motion in which to serve and file an answer Brief, and the moving party shall have ten (10) days after service of the answer Brief in which to serve and file a reply brief, unless a longer or shorter time is ordered by the Court. Each motion shall be separate, while alternative motions filed together shall each be identified on the caption. Failure to file an answer Brief or reply Brief within the time prescribed may be deemed a waiver of the right thereto and may subject the motion to summary ruling.

B. Oral Arguments.

The granting of a motion for oral argument, unless required by the Indiana Rules of Procedure, shall be wholly discretionary with the Court.

C. Service on Opposing Party.

In all cases where any pleading or other document is required to be served upon opposing counsel, proof of such service may be made either by:

1. A certificate of service signed by counsel of record for the serving party and *the certificate shall specify by name and address all counsel upon whom the pleading or documents was served*; or
2. An acknowledgment of service signed by the party served or counsel of record.

RULE 6

INTERROGATORIES

A. Number limited.

Interrogatories shall be tailored specifically to the cause in which they are served and numbered consecutively to facilitate response. Interrogatories shall be limited to a total of twenty-five (25) including sub—parts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of court, additional interrogatories may be propounded.

B. Answers and objections.

Answers or objections to interrogatories under Trial Rule 31 or 33 of the Indiana Rules of Procedure shall set forth in full the interrogatories being answered or objected to immediately preceding the answer or objection.

C. Duplicated forms.

No duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the cause in which the same are filed and served.

RULE 7

DEPOSITIONS AND VIDEO TAPED DEPOSITIONS

All video taped depositions filed with the court shall be accompanied by a transcript of the testimony.

All depositions filed with the Wayne County Clerk in any civil cause shall be destroyed by the Clerk without being microfilmed or otherwise reproduced two (2) years after termination of the cause by dismissal or final judgment. The party who filed the deposition may obtain the same from the Clerk by making written request from the Clerk for the same within two (2) months before the expiration of the two (2) years. Any party may file written motion with the Court, with notice to opposing counsel, requesting an order releasing the deposition within twenty-two (22) months from termination of the cause.

RULE 8

CONTINUANCES AND ENLARGEMENTS OF TIME

A. Motion.

All Motions for Continuance or enlargement of time (whether ~ 2~, 3~, etc.), shall be made in writing, shall state whether opposing counsel objects to the motion, and shall state whether prior continuances have been requested by either party and whether or not such request was granted. The Court may require any written Motion for Continuance to be signed by the *party* requesting the continuance.

B. First Enlargement of Time.

The first Motion for Enlargement of Time to file a responsive pleading to a Complaint filed by a party shall be granted summarily for up to forty-five (45) days. Any request for additional time beyond forty-five (45) days or a subsequent request for enlargement of time shall be at the discretion of the Court.

C. Title of Motion.

A Motion for Continuance or Motion for Enlargement of Time, whether it is plaintiff's or defendant's motion, shall denominate whether it is the First (1st), Second (2nd), Third (3rd), etc. Motion for Continuance or Motion for Enlargement of Time by Plaintiff or Defendant, i.e., Plaintiff's Second Motion for Enlargement of Time.

TRIAL READINESS CERTIFICATE (TRC)

A. TRC.

Any party may request the scheduling of a trial by filing a Trial Readiness Certificate (TRC) that certifies that the cause is ready to be scheduled for trial and that no continuance of any trial date so scheduled will be requested for the purpose of filing any pleading or motion, pursuing further discovery proceedings, securing attendance of any witness or party, or for any reason now reasonably foreseeable.

B. Request of Response.

A party filing a Trial Readiness Certificate may request that the other party file a Trial Readiness Certificate within thirty (30) days. Such request shall be made on the Trial Readiness Certificate. The party requested to file a TRC within thirty (30) days shall file a TRC within such time unless within such thirty (30) day period an application for enlargement of time showing good cause is filed.

C. Failure to Timely Respond.

In the event a party requested to file a TRC within thirty (30) days fails to timely file a TRC or a motion for enlargement of time within which to file a TRC, the court may summarily proceed to schedule a pre-trial and trial date with or without a praecipe being filed by the requesting party.

D. Form

Trial Readiness Certificates (TRC's) shall be in the form set forth in Appendix "A". TRC's not in such form may be summarily denied. Trial Readiness Certificates may be obtained from the Wayne County Clerk's Office.

RULE 10

PRE - TRIAL PROCEDURE A.

Setting of Pre-Trial Conference.

A case shall be set for a pre—trial conference approximately one (1) month prior to the trial date. B.

Filing of Pre-Trial Statements.

At least two (2) days prior to the pre—trial conference, counsel for each party shall file Pre-Trial Statements which shall include all matters deemed important to the trial of the cause, but must include all information set forth in Paragraph “C” below.

C. Form of Pre—Trial Statement.

The pre—trial statement shall contain the following statements in separate numbered Paragraphs as follows:

1. JURISDICTION. Setting forth the basis of jurisdiction.
2. STATUS OF RECORD. Setting forth the pleadings raising the issues.
3. PENDING MOTIONS AND OUTSTANDING DISCOVERY. Setting forth the motions or other matters requiring action by the Court and a concise statement as to the status of discovery.
4. STATEMENT OF POSITION. Setting forth a concise statement as to each party's position.
5. STIPULATIONS. Setting forth a concise statement of stipulated facts.
6. ISSUES OF FACT. Setting forth a statement of the issues of fact which remain to be litigated at trial.
7. ISSUES OF LAW. Setting forth a concise statement of the issues of law on which there is agreement and which remain to be litigated at trial.
8. EXHIBITS. Setting forth each exhibit which shall be presented at trial.
9. AMENDMENTS TO PLEADINGS. Setting forth a concise statement as to whether or not there are any amendments to the pleadings.
10. PROBABLE SETTLEMENT. Setting forth a concise statement as to settlement negotiations and the likelihood of settlement.
11. PROBABLE TRIAL TIME. Setting forth a concise statement as to the anticipated length of trial.
12. LIST OF WITNESSES. Setting forth a numbered list of trial witnesses which shall include each witnesses'

address. Expert witnesses shall be so designated. D.

Failure to file Pre-Trial Statement.

In the event either party should fail to timely file a PreTrial Statement as required by this Rule, the Court shall have the right to cancel the pre-trial conference or to enter appropriate sanctions against the party failing to file such Pre-Trial Statement.

E. Pre—Trial Order.

Following the pre-trial conference, a pre-trial order shall be entered whIch recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered which limits the issues for trial to those not disposed of by admissions or agreement of counsel, and such order when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice.

F. More than one Pre-Trial Conference.

If necessary or advisable, the Court may adjourn the pretrial conference from time to time or may order an additional Pre-Trial Conference.

RULE 11

CASE MANAGEMENT CONFERENCE

A. Mandatory Case Management Conference.

A case management conference shall be required in all personal injury and medical malpractice actions.

B. Discretionary Case Management Conference.

A case management conference may be ordered upon the filing of a motion by any party or on the court's own motion.

C. Conference procedure.

Within one hundred twenty (120) days of the filing of a Complaint in those cases where a case management conference is mandatory, or within thirty (30) days after otherwise being ordered to participate in a case management conference, the Plaintiff shall arrange a meeting of all parties for the following purposes:

1. *List of Witnesses.* Exchange lists of witnesses known to have knowledge of the facts supporting the pleadings. The parties shall thereafter be under a continuing obligation to advise opposing parties of other witnesses as they become known.
2. *Documents.* Exchange all documents which are contemplated to be used in support of the pleadings. Documents later shown to have been reasonably available to a party and not exchanged may be subject to exclusion at the time of trial.
3. *Other Evidence.* Exchange any other evidence reasonably available to obviate the filing of unnecessary discovery motions.
4. *Settlement.* Discuss settlement of the action.
5. *Discovery Schedule.* Agree upon a preliminary schedule for all discovery.
6. *Complicated Case.* Discuss whether the action is sufficiently complicated so that additional conferences may be required.

D. Case Management Order.

Within ten (10) days after meeting, those attending are to file a joint Case Management Order setting forth:

1. The likelihood of mediation and settlement;
2. A detailed schedule of discovery for each party;
3. A limitation on the time to join additional parties and to amend the pleadings;
4. A limitation on the time to file all pre-trial motions;
5. Any other matters which the parties want to address; and;
6. A preliminary estimate of the time required for trial.

RULE 12

JURY INSTRUCTIONS

A. Proposed Jury Instructions.

Not less than seven (7) days prior to trial or longer as the Court may order, counsel shall submit proposed jury instructions to the Court, with copies to all other counsel. If proposed jury instructions are sent to the Court pursuant to Trial Rule 5(E), copies of such proposed instructions shall also be sent to the Court that same day before 4:30 o'clock P.M. via facsimile transmission (Telephone: 765-973—9250) . Instructions covering matters occurring at the trial which could not reasonable be anticipated may be substituted at the conclusion of the testimony. Each instruction shall be accompanied by citations of

B. Objections to Proposed Jury Instructions.

Written objections to proposed jury instructions shall be submitted to the Court on or before the first day of trial. Written objections shall be numbered and shall specify distinctly the objectionable matter in the proposed instruction. Each objection shall be accompanied by citations of authority.

RULE 13

MOTIONS TO COMPEL DISCOVERY

To avoid undue delay in the administration of justice, the Court shall refuse to rule on any and all motions for discovery and the production of documents under Trial Rules 27 through 37, unless moving counsel shall advise the Court in writing and within the motion to compel discovery that, after personal consultation with opposing counsel or the opposing party as the case may be, and good faith attempts to resolve differences, the parties are unable to reach an accord regarding their discovery differences. This statement shall recite the date, time and place of such conferences and the names of all persons participating therein and shall be verified.

If counsel for a party advises the Court in writing that opposing counsel has refused or delayed such meeting, then the Court may take such action as is appropriate to avoid further delay.

All motions to compel discovery shall attach thereto a copy of the original interrogatory, request, admission or other discovery request about which the motion to compel is directed.

RULE 14

CUSTODY AND DISPOSITION OF MODELS AND EXHIBITS A.

Custody.

After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried before the Court shall be placed in the custody of the Court Reporter unless otherwise ordered by the Court.

B. Removal.

All models, diagrams, exhibits or material placed in the custody of the Court Reporter shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, within four (4) months after the final disposition of the case unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within ninety (90) days after the final disposition of the appeal. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed in the cause. Upon failure of such items to be removed in accordance with this rule, the Court may order the same destroyed or otherwise disposed of in a reasonable manner.

RULE 15

RANDOM FILING OF CIVIL CASES

Certain civil filings in Wayne Circuit, Wayne Superior Court No. 1 and Wayne Superior Court No. 2 shall be assigned to said courts by way of a computer generated random selection process. The following civil actions shall be subject to this Rule, to-wit:

- Civil Torts
- Civil Plenary
- Protective Orders
- Domestic Relations
- Guardianships Estates
- Adopt ions
- Trusts
- Mental Health

Civil Miscellaneous, except cases filed by the Prosecuting Attorney's Office.

Reciprocal Support, except where the support sought relates to matters previously addressed in an existing dissolution of marriage or paternity decree. In this situation, the Reciprocal shall be filed in the court, which has the existing order or decree.

Paternity filings shall be exempt from the random selection process.

Captions of all proposed initial pleadings shall contain blank spaces where appropriate to enable the Clerk to enter the identity of the receiving court and its cause number.

The judges of said courts shall periodically review the filing pattern and reserve the right to transfer cases in the event of a disproportionate distribution of cases in order to expedite dispositions of all pending cases.

RULE 16

SPECIAL JUDGE SELECTION IN CIVIL CASES

In the event a special judge selected pursuant to Rule 79(D), (E), or (F) does not accept the case, a special judge shall be designated by the Clerk of the Wayne Circuit Court in sequence from the following list of judges, to—wit:

1. P. Thomas Snow, Judge, Wayne Superior Court No. 1
2. Douglas VanNiddlesworth, Judge, Wayne Circuit Court
3. Steven J. Cox, Judge, Franklin Circuit Court
4. Barbara Arnold Harcourt, Judge, Rush Circuit Court

6. David Northarn, Judge, Rush County Court
7. James Williams, Judge, Union Circuit Court
8. Frank W. Messer, Jr., Judge, Fayette Superior Court
9. Daniel Lee Pflum, Judge, Fayette Circuit Court
10. Gregory A. Horn, Judge, Wayne Superior Court No. 2

The Clerk shall maintain such records as necessary to assure that selections are rotated in the above sequence.

In the event a judge ceases to serve as judge, the Clerk shall substitute the name of his or her successor in the above rotation.

RULE 17

ATTORNEYS FEES IN CIVIL CASES

RULE 1.5 of the Rules of Professional Conduct adopted by the Supreme Court of Indiana shall govern the awarding of attorneys fees I civil actions. All fees charged by attorneys must be reasonable. Factors which the Wayne Circuit and Superior Courts will consider in determining attorney fee awards in civil cases include:

1. The time and labor required, the novelty and difficulty of questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal service;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation and ability of the lawyer or lawyers performing the services.

The following guidelines are not to be used as a substitution for the attorney's determination of what a reasonable fee would be in a given situation. Rather, the guidelines are established to assist attorneys by outlining what the Court will deem to be reasonable based upon the factors contained in Rule 1.5 of the Rules of Professional Conduct.

The basic guideline amounts are based upon usual and ordinary services. The guidelines also will assist in calculations of fees generated by the provision of extraordinary services.

Counsel are directed to examine the Domestic Relations Rules and Probate Rules of Wayne County with respect to fee matters pertaining to domestic relations cases, probate matters, and

Mortgage Foreclosure And Mechanics Liens

In cases involving the foreclosure of a mortgage, the Court will find as reasonable attorney fees, unless there is evidence to the contrary, the following:

- to \$1,500.00 for the first \$10,000.00 of judgment (or any portion thereon);
- to 5% of the next \$15,000.00;
- to 3% of the next \$25,000.00;
- to 1—1/2% of the next \$50,000.00;
- to 1% of the next \$150,000.00;
- to 1/2% of everything over \$250,000.00.

The above fees shall include conferences with client, preparation of notices, complaint and summons, obtaining judgment, and reasonable collection efforts. The Court will find as a reasonable fee in the amount up to One Hundred Ten Dollars (\$110.00) per hour for trial preparation and trial. In instances where additional fees are requested, the attorney shall file a Verified Petition/Affidavit which details the services and times expended thereon and includes those matters referred to in Rule 1.5 of the Rules of Professional Conduct.

Other Written Instruments Including Leases, Notes, and Contracts

In all cases where instruments provide for attorney's fees, or such fees are provided for by statute, except real estate mortgage foreclosure, in the absence of evidence to the contrary, the Court will find as reasonable attorneys fees, unless there is evidence to the contrary, the following:

<u>Amount of Debt</u>	<u>%~fee to be awarded</u>
The first \$3,000.00	33—1/3%
The next \$10,000.00	17%
The next \$12,000.00	8%
Excess of \$25,000.00	3%

The above fees shall include conferences with client, preparation of notices, complaint and summons, obtaining judgment, and reasonable collection efforts. The Court will find as a reasonable fee in the amount of One Hundred Ten Dollars (\$110.00) per hour for trial preparation and trial. In instances

where additional fees are requested the attorney shall file a Verified Petition/Affidavit which details the services and times expended thereon and includes those matters referred to in Rule 1.5 of the Rules of Professional Conduct.